

1 Hon. David W. Christel  
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1	FILED	LODGED
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3	May 26, 2020	
4	CLERK U.S. DISTRICT COURT	
5	WESTERN DISTRICT OF WASHINGTON AT TACOMA	
6	BY	DEPUTY

7 UNITED STATES DISTRICT COURT FOR THE  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 IN THE MATTER OF THE SEARCH OF:

11 NO. MJ20-5126

12 One (1) cellular telephone (360) 265-9129  
(TT1), further described in Attachment A, for  
13 Investigation of 18 U.S.C. § 1343 and Other  
Offenses

MOTION TO SEAL AND FOR NON-  
DISCLOSURE  
**(FILED UNDER SEAL)**

14  
15 The United States respectfully requests that the Search Warrant, Application, and  
16 related documents, including this motion and attached proposed orders, be sealed, and  
17 that a non-disclosure order be entered to protect the government's ongoing criminal  
18 investigation. The United States of America further respectfully requests that,  
19 notwithstanding the requested sealing and non-disclosure orders, the United States retain  
20 the authority to produce the materials subject to this Court's orders as part of its  
21 discovery obligations in a criminal case.

22 **LEGAL BASIS FOR SEALING**

23 Federal courts are empowered to seal documents in appropriate circumstances. *Cf.*  
24 Fed. R. Crim. P. 6(e)(4) (sealing of indictments). It is well-settled that federal courts  
25 have inherent authority to control papers filed with the court, *United States v. Shryock*,  
26 342 F.3d 948, 983 (9th Cir. 2003), including the power to seal affidavits filed with search  
27 warrants in appropriate circumstances. In *Times Mirror Company v. United States*, 873  
28 F.2d 1210 (9th Cir. 1989), the Court recognized that "information disclosed to the

1 magistrate in support of the warrant request is entitled to the same confidentiality  
 2 accorded other aspects of the criminal investigation.” *Id.* at 1214. This inherent power  
 3 may appropriately be exercised when disclosure of the affidavit would disclose facts that  
 4 would interfere with an ongoing criminal investigation. *United States v. Napier*, 436  
 5 F.3d 1133, 1136 (9th Cir. 2006) (noting that a sealed search warrant protects the  
 6 “government’s interest in maintaining [the] integrity of ongoing criminal investigations  
 7 and ensuring the safety of the informant”).

#### 8 **LEGAL BASIS FOR NON-DISCLOSURE**

9 The Stored Communications Act (SCA) governs voluntary and compelled  
 10 disclosure of subscriber or customer information by internet service providers, such as  
 11 VERIZON WIRELESS, that are providers of electronic communication services, as  
 12 defined in 18 U.S.C. § 2510(15), and/or a remote computing service, as defined in 18  
 13 U.S.C. § 2711(2). Section 2705(b) of the SCA authorizes the Court to issue a non-  
 14 disclosure order “commanding a provider of electronic communications service or remote  
 15 computing service to whom a warrant, subpoena, or court order is directed, for such  
 16 period as the court deems appropriate, not to notify any other person of the existence of  
 17 the warrant, subpoena, or court order.” 18 U.S.C. § 2705(b). The SCA provides that  
 18 such an order is appropriate if notification would result in:

- 19 (1) endangering the life or physical safety of an individual;
- 20 (2) flight from prosecution;
- 21 (3) destruction of or tampering with evidence;
- 22 (4) intimidation of potential witnesses; or
- 23 (5) otherwise seriously jeopardizing an investigation or unduly delaying  
 24 a trial.

25 18 U.S.C. § 2705(b.)

26 VERIZON WIRELESS is a provider of an electronic communication service, as  
 27 defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18  
 28 U.S.C. § 2711(2). This Court has authority under 18 U.S.C. § 2705(b) to issue “an order

1 commanding a provider of electronic communications service or remote computing  
 2 service to whom a warrant, subpoena, or court order is directed, for such period as the  
 3 court deems appropriate, not to notify any other person of the existence of the warrant,  
 4 subpoena, or court order.” *Id.*

5 **FACTUAL BASIS FOR SEALING AND NON-DISCLOSURE**

6 This is an investigation into a wire fraud scheme that involved Julie Sue DORAN  
 7 defrauding a victim company of approximately \$700,000, much of it in real estate in  
 8 Aruba, where the target, Julie Sue DORAN eventually resided for an unknown amount of  
 9 time. In this case, the requested non-disclosure and sealing orders would be appropriate  
 10 because the warrant relates to an ongoing criminal investigation that is neither public nor  
 11 known to the target of the investigation, and its disclosure may alert the targets to the  
 12 ongoing investigation. There is reason to believe that disclosure of the investigation  
 13 would result in the destruction of evidence, from cell phones or otherwise. Notification  
 14 of the existing warrant would also give the target an opportunity to flee from prosecution,  
 15 destroy or tamper with evidence, change patterns of behavior, intimidate potential  
 16 witnesses, or endanger the physical safety of the many witnesses used to date. *See* 18  
 17 U.S.C. § 2705(b). Accordingly, the United States of America respectfully requests that  
 18 the documents in this case be sealed because their premature disclosure may seriously  
 19 jeopardize the investigation.

20 **CONCLUSION**

21 For the above reasons, the United States respectfully requests that the Court:

22 (1) enter the attached orders directing VERIZON WIRELESS not to disclose  
 23 the existence or content of the subpoena, **for a period of one year**, except that  
 24 VERIZON WIRELESS may disclose the subpoena to an attorney for VERIZON  
 25 WIRELESS for the purpose of receiving legal advice; and

26 (2) enter the attached order sealing the warrant application materials and other  
 27 documents related thereto, including the motions and orders related to sealing and non-

1 disclosure, until the earliest of the following: (a) two weeks following the unsealing of  
2 any charging document in a matter for which the warrants were issued; (b) two weeks  
3 following the closure of the investigation for which the warrants were issued; or (c)  
4 sixteen months following issuance of the warrant, unless the Court, upon motion of the  
5 government for good cause, orders an extension of the Order.

6 DATED this 26th day of May, 2020.

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8 Respectfully submitted,

9  
10 BRIAN T. MORAN  
11 United States Attorney

12 /s/ André M. Peñalver  
13 ANDRÉ M. PEÑALVER  
14 Assistant United States Attorney